

IP 02-0147-CR 1 T/F US v Hobdy
Magistrate Kennard P. Foster

Signed on 10/6/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 02-147-CR-01 (T/F)
)	
TAMMY HOBODY,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on August 23, 2005, designating the Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on August 19, 2005, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held October 4, 2005, in accordance with Title 18 U.S.C. §3583 and Rule 32.1 of the *Federal Rules of Criminal Procedure*. At all proceedings, Ms. Hobdy appeared in person and with her appointed counsel, Bill Dazey. The government appeared by Barry Glickman, Assistant United States Attorney, for John Dowd, Assistant United States Attorney. Dwight Wharton, U. S. Parole and Probation officer, appeared and participated for Diane Bell.

The Court conducted the following procedures in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Bill Dazey, Office of Indiana Federal Defender, was appointed to represent Ms. Hobdy in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Ms. Hobdy and her counsel who informed the Court that they had read and understood the specifications of violation and waived further reading thereof.

3. Ms. Hobdy was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition.

4. Ms. Hobdy was informed she would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Ms. Hobdy was informed she had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. Ms. Hobdy was informed that if the preliminary hearing resulted in a finding of probable cause that Ms. Thorne had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on August 23, 2005.

7. Mr. Dazey stated that Tammy Hobdy desired to waive the preliminary examination and proceed to the revocation phase of the proceedings this date. Ms. Hobdy then waived the preliminary hearing in writing and was held to answer.

8. Ms. Hobdy, by counsel, stipulated that she committed the violations of specifications as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed August 19, 2005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p><i>“The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each months.”</i></p> <p>The offender has failed to submit written report forms for the months of June and July 2005.</p>
2	<p><i>“The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.”</i></p> <p>The undersigned met with the offender at the probation office on July 26, 2005. At the meeting, the offender told the probation officer she would be homeless in a few days. The probation officer contacted staff at Volunteers of America and determined there was space available for homeless assistance at the Theodora House. The undersigned instructed the defendant to report to Theodora House on July 27, 2005, no later than 3:00 p.m. In addition, the defendant was instructed to check in with the probation officer on a weekly basis. To date, the defendant has failed to report to Theodora House, and failed to check in with the probation officer.</p>
3	<p><i>“The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.”</i></p> <p>On July 26, 2005, the offender reported she was employed at Lakeview Manor. On August 8, 2005, the offender’s supervisor at Lakeview Manor advised the offender’s last day of employment was July 1, 2005. She was terminated for job abandonment.</p> <p>On July 26, 2005, the offender reported her temporary home address as 1628 Sharon. The probation officer has been unable to locate such an address. The offender’s whereabouts are currently unknown.</p>
4	<p><i>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.”</i></p> <p>As reported to the Court in previous violation reports, the offender tested positive for cocaine on October 4,, 2004, October 13, 2004, and January 26, 2005.</p>

- 5 ***“The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.”***

On May 31, 2005; July 7, 2005; July 21, 2005; July 28, 2005; August 4, 2005; and August 11, 2005, the offender failed to report for individual counseling at Volunteers of America. In addition, on July 9, 2005; July 19, 2005; July 23, 2005; and August 13, 2005, the offender failed to report to Volunteers of America for random urinalysis testing as required.

Counsel for the parties further stipulated the following:

- 1) Ms. Hobdy has a relevant criminal history category of I. *See, U.S.S.G. §7B1.4(a).*
- 2) The most serious grade of violation committed by Ms. Hobdy constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Ms. Hobdy is 4-10 months.
- 4) The parties agree that upon revocation, the appropriate disposition of the case would be revocation of Ms. Hobdy’s supervised release and that she be sentenced to the custody of the Attorney General or his designee for a period of 10 months. Upon release from confinement, no supervised release is to follow.
- 5) Ms. Hobdy is to begin service of her sentence immediately.

The Magistrate Judge informed the defendant and the parties’ respective counsel that the Magistrate Judge would accept the parties’ stipulation.

The Court placed Ms. Hobdy under oath and she admitted the above violations.

The Court having heard the evidence and/or arguments of the defendant and her counsel, and the government, now finds that Ms. Hobdy violated the specified condition of supervised release as delineated in the Petition to Revoke her supervised release.

Ms. Hobdy's supervised release is therefore **REVOKED** and she is sentenced to the custody of the Attorney General or his designee for a period of 10 months. The service of the sentence shall begin immediately. At the conclusion of Ms. Hobdy's term of confinement, no supervised release is to follow.

The Magistrate Judge requests that Diane Bell, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, District Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Ms. Hobdy stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Ms. Hobdy entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Ms. Hobdy's supervised release and the sentence imposed of imprisonment of 10 months in the custody of the Attorney General or his designee. Further, that upon Ms. Hobdy's release from confinement, she will not be subject to supervised release.

IT IS SO RECOMMENDED this 6th day of October, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

cc:

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U. S. Parole and Probation

U. S. Marshal